

JS 44 (Rev. 12-07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kathy I. Murphy

(b) County of Residence of First Listed Plaintiff Chester, TN

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Derek R. Layser, Layser & Freiwald, P.C., 1500 Walnut St, 18th Fl,
Philadelphia, PA 19102; 215-875-8000**DEFENDANTS**

Genesis Healthcare LLC d/b/a Crestview Center

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332

Brief description of cause:

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/27/11

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KATHY I. MURPHY
250 North Road
Enville, TN 38332

Plaintiff,

v.

GENESIS HEALTHCARE LLC d/b/a
CRESTVIEW CENTER
262 Tollgate Road
Langhorne, PA 19047
and

COOPER UNIVERSITY HOSPITAL
One Cooper Plaza
Camden, NJ 08103

Defendants.

CIVIL ACTION NO:

JURY TRIAL DEMANDED

CIVIL ACTION - COMPLAINT

1. Plaintiff, Kathy I. Murphy, is a legal resident and citizen of the State of Tennessee, with an address of 250 North Road, Enville, TN 38332.

2. Defendant, Genesis HealthCare LLC d/b/a Crestview Center (“Crestview Center”), is a limited liability company and/or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania and which owns, operates, and controls a skilled nursing facility located at 262 Tollgate Road, Langhorne, PA 19047.

3. At all relevant times, Defendant Crestview Center was acting by itself and/or by and through its agents, ostensible agents, servants, and employees, including its nursing staff.

4. Plaintiff is asserting a professional liability claim against Crestview Center.

5. Defendant, Cooper University Hospital (hereinafter “Cooper”), is a corporation, professional association and/or legal entity organized and existing under the laws of the State of New

Jersey for the purpose of providing medical services with a hospital located at One Cooper Plaza, Camden, NJ 08103.

6. At all times relevant, defendant hospital was acting by and through its agents, servants and employees, including its nursing staff.

7. Plaintiff is asserting a professional liability claim against Cooper.

8. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

9. This Court has jurisdiction over the parties by virtue of diversity of citizenship pursuant to 28 U.S.C. § 1332.

10. At all times relevant, Plaintiff Kathy Murphy was under the medical care, treatment and attendance of the defendants, directly or through their agents, servants and/or employees, and was under the defendants' direct control or right of control.

11. In January of 2009, Plaintiff was experiencing vaginal bleeding and sought treatment at the Center for Women's Health in Langhorne, PA.

12. Plaintiff's medical history was significant for HTN, Diabetes, tachycardia, and morbid obesity.

13. Plaintiff was subsequently diagnosed with Grade I endometrial cancer and referred to Dr. David Warshal.

14. On June 17, 2009, Dr. Warshal performed a total abdominal hysterectomy with bilateral salpingo-oophorectomy at Cooper University Hospital.

15. Plaintiff was discharged from Cooper University Hospital on June 20, 2009.

16. In the days following the surgery, Plaintiff experienced leakage of fluid from

her abdominal wound.

17. On June 23, 2009, Plaintiff presented to the ED at Cooper University Hospital due to the fluid leakage and was admitted for disruption of the surgical wound.

18. During this admission, the staples from the incision were removed and wound vac therapy provided.

19. In performing the wound vac therapy, two (2) medium black sponges and one (1) large white foam sponge were used.

20. Plaintiff was discharged from Cooper University Hospital on June 26, 2009 and transferred to Crestview Center for wound care management and physical therapy.

21. On admission to Crestview Center, wound vac therapy was to be provided every Monday-Wednesday-Friday and on an as-needed basis.

22. Plaintiff received wound care therapy at Crestview Center until July 10, 2009, at which point her wound was managed with wet-to-dry dressing changes.

23. Plaintiff was discharged from Crestview Center on July 29, 2009 to begin home health care.

24. In October of 2009, Plaintiff began experiencing persistent drainage of fluid from the surgical wound.

25. On December 11, 2009, Plaintiff followed-up with Dr. Warshal due to the persistent fluid drainage.

26. On examination, Dr. Warshal discovered foreign material within the wound that was unable to be removed.

27. On January 6, 2010, Plaintiff presented to Cooper University Hospital for surgical removal of the foreign body and wound revision.

28. Per the Operative Report, Plaintiff's prior surgical incision had to be extended to encompass the entire area containing the foreign body.

29. The Operative Report further states that there was a "large amount of sponge-like material" found within the wound.

30. The Pathology Report indicates that the foreign body was a VAC sponge.

31. Plaintiff was discharged to home the same day.

32. The grievous injuries suffered by Kathy I. Murphy as more fully set forth below, were caused solely and exclusively by the negligence of Defendants and/or their agents, servants, and employees, including their nursing staff, and were due in no manner whatsoever to any act or failure to act on the part of Plaintiff.

33. As a result of the negligence of Defendants, Plaintiff was caused to suffer the following damages:

- a) persistent abdominal pain;
- b) persistent drainage of fluid from the surgical wound;
- c) additional scarring;
- d) need for additional wound vac therapy;
- e) need for additional wound care management;
- f) delayed healing of surgical wound;
- g) need for pain medication;
- h) need for additional consultations;

- I) need for additional surgery for removal of the foreign body;
- j) need for wound revision;
- k) need for additional physical therapy;
- l) increased risk of future infections;
- m) need for home health care;
- n) delay in recovery;
- o) past pain and suffering;
- p) past medical expenses;
- q) past mental anguish;
- r) embarrassment and humiliation;
- s) disfigurement;
- t) loss of life's pleasures;
- u) wage loss;
- v) loss of earning capacity; and
- w) incidental and other expenses.

34. As a direct result of the negligence of the Defendants, plaintiff has incurred various and diverse medical expenses for her treatment and care.

COUNT I

Plaintiff Kelly I. Murphy v. Defendant Cooper University Hospital

35. The allegations of paragraphs 1 through 34 inclusive are incorporated herein by reference as though set forth at length.

36. The negligence and carelessness of Defendant is vicarious for the acts of its agents,

ostensible agents, servants and/or employees, including its nursing staff, and consisted of one or more of the following:

- a) failure to properly perform wound vac therapy;
- b) negligently leaving a VAC sponge inside the Plaintiff's abdominal wound;
- c) failure to properly account for the VAC sponges utilized in wound vac therapy;
- d) delaying the healing of Plaintiff's surgical wound;
- e) failure to prevent the injuries sustained by Plaintiff as a result of leaving a foreign body inside her abdominal wound; and
- f) delaying Plaintiff's recovery.

37. The negligence of Defendant increased the risk of harm to the Plaintiff and was a substantial contributing factor to the injuries sustained.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant individually, jointly, and severally for sums in excess of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of costs, pre-judgment interest, and post-judgment interest.

COUNT II

Plaintiff Kelly I. Murphy v. Defendant Genesis HealthCare LLC d/b/a Crestview Center

38. The allegations of paragraphs 1 through 37 inclusive are incorporated herein by reference as though set forth at length.

39. The negligence and carelessness of Defendant is vicarious for the acts of its agents, ostensible agents, servants and/or employees, including its nursing staff, and consisted of one or more of the following:

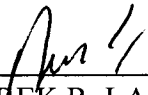
- a) failure to properly perform wound vac therapy;

- b) failure to provide appropriate wound care management;
- c) negligently leaving a VAC sponge inside the Plaintiff's abdominal wound;
- d) failure to properly account for the VAC sponges utilized in wound vac therapy;
- e) delaying the healing of Plaintiff's surgical wound;
- f) failure to prevent the injuries sustained by Plaintiff as a result of leaving a foreign body inside her abdominal wound; and
- g) delaying Plaintiff's recovery.

40. The negligence of Defendant increased the risk of harm to the Plaintiff and was a substantial contributing factor to the injuries sustained.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant individually, jointly, and severally for sums in excess of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of costs, pre-judgment interest, and post-judgment interest.

LAYSER & FREIWALD, P.C.

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Dated: July 27, 2011